

# Montana Code Annotated 2005

## TITLE 77. STATE LANDS

### CHAPTER 3

#### Part 3. Coal

**77-3-301. Coal leases authorized.** In response to an application or on its own initiative, the board may lease in a manner that it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal, upon the terms and conditions provided in this section and subject to the rules that the board prescribes.

**History:** En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part); amd. Sec. 4, Ch. 318, L. 2003.

**77-3-302. Lands subject to coal leasing.** The authority to lease extends to state lands no matter how acquired and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued.

**History:** En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

**77-3-303. Rules relating to coal leasing.** (1) The board may adopt rules and perform all acts not inconsistent with The Enabling Act, the constitution, and the statutes of this state that it considers necessary and proper relating to the leasing of state land for coal mining purposes.

(2) The board is encouraged to lease the property interests acquired from the federal government in the Crown Butte land exchange for coal mining purposes. The proceeds from the leases must be used for the direct funding of education, including K-12 school districts, institutions of higher education, and vocational-technical education, unless otherwise provided in the transfer agreement.

**History:** En. Sec. 44, Ch. 60, L. 1927; re-en. Sec. 1805.44, R.C.M. 1935; R.C.M. 1947, 81-507; amd. Sec. 1, Ch. 485, L. 2001.

**77-3-304. Protection of rights of purchasers or prior lessees.** Whenever the leased lands are under certificate of purchase or patents have been issued and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

**History:** En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

**77-3-305. Limitations on leasing.** The board shall not issue leases:

(1) to any citizen of another country or any person, partnership, corporation, association, or other legal entity controlled by interests foreign to the United States unless such country provides for similar or like privileges to citizens of the United States; or

(2) if, after a determination of the amount, location, and quality of the coal on the lands for lease, the extraction of the coal from such lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from such operations on such lands in the future.

**History:** En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part); amd. Sec. 1, Ch. 127, L. 1983.

**77-3-306. Conditions on manner of mining.** (1) Every coal lease shall be conditioned upon compliance with Title 82, chapter 4, parts 1 and 2.

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease after a hearing before the board.

**History:** En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

**77-3-307. Improvements of former lessee.** (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition shall be made of the improvements satisfactory to the board before a new lease is issued. If the owner of the improvements desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree on the value of such improvements, then such value shall be ascertained and fixed as provided in 77-6-306.

(2) Before a new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed on between them or as fixed by the aforesaid officers or officer or that he has tendered payment as so fixed or that the owner desires to remove his improvements.

**History:** En. Sec. 43, Ch. 60, L. 1927; re-en. Sec. 1805.43, R.C.M. 1935; amd. Sec. 32, Ch. 428, L. 1973; R.C.M. 1947, 81-506.

**77-3-308. Limitation on public inspection rights.** The department may withhold from public inspection any information obtained from a coal mining lessee or permittee under this part if the information relates to the geology of the mining lease or permit. The withholding is effective for as long as the department considers it necessary either to protect the lessee's or permittee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

**History:** En. Sec. 3, Ch. 105, L. 1989.

**77-3-309 through 77-3-310 reserved.**

**77-3-311. Form of lease.** The board shall prescribe the form of the lease.

**History:** En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

**77-3-312. Leasing procedures.** Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public comments on such evaluation. Leases shall be awarded by a competitive bid system, including a bonus bid for the first year's rental, and no lease shall be awarded at less than fair market value.

**History:** En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

**77-3-313. Bond requirements.** The board shall also demand a surety company bond in such form and amount as it may determine, conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease; but a lessee may, in lieu of furnishing a surety company bond, increase the cash deposit hereinbefore provided for to such an amount as will in the judgment of the board make the furnishing of a bond unnecessary.

**History:** En. Sec. 42, Ch. 60, L. 1927; re-en. Sec. 1805.42, R.C.M. 1935; R.C.M. 1947, 81-505.

**77-3-314. Duration of lease.** (1) Coal mining leases shall be issued for a primary term of 10 years and so long thereafter as coal is produced from such lands in commercial quantities.

(2) A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under 82-4-221 or in a mine-site location permit under 82-4-122 prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit.

(3) For the purpose of this part, "commercial quantities" means that quantity of coal which can be sold at profit in the commercial market.

**History:** En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

**77-3-315. Repealed.** Sec. 2, Ch. 538, L. 1981.

**History:** En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part).

**77-3-316. Rental and royalty terms.** (1) The compensation of the state under all coal mining leases shall be upon a rental and royalty basis and shall be fixed and determined by the board.

(2) The rental and royalty terms of each lease shall be subject to readjustment to reflect fair market value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is producing coal in commercial quantities.

(3) The rental shall be on a per acre basis but in no case shall it be less than \$2 per acre.

(4) The amount of such royalty shall be based upon the kind, grade, and character of the coal in each particular mine; upon the size, shape, and nature of the coal vein, strata, or body; and upon the shipping and marketing facilities for the product. Consideration shall also be given to every other known factor affecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than 10% of the f.o.b. mine price of a ton prepared for shipment.

**History:** (1), (3), (4)En. Sec. 40, Ch. 60, L. 1927; re-en. Sec. 1805.40, R.C.M. 1935; amd. Sec. 3, Ch. 358, L. 1975; Sec. 81-503, R.C.M. 1947; (2)En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; Sec. 81-502, R.C.M. 1947; R.C.M. 1947, 81-502(part), 81-503.

**77-3-317. Report and payment of royalty.** (1) On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes showing:

- (a) the number of tons mined during the preceding calendar month;
- (b) the price obtained therefor at the mine;
- (c) the total amount of all sales; and
- (d) any additional information required by the department.

(2) The report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

**History:** En. Sec. 45, Ch. 60, L. 1927; re-en. Sec. 1805.45, R.C.M. 1935; amd. Sec. 33, Ch. 428, L. 1973; R.C.M. 1947, 81-508.

**77-3-318. Disposition of royalties and other receipts.** All fees, rentals, royalties, and bonuses collected under state coal leases shall be paid to the department and credited as follows:

(1) All fees shall be credited to the state general fund.

(2) All rentals and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grants to which the lands under lease belong.

**History:** En. Sec. 47, Ch. 60, L. 1927; re-en. Sec. 1805.47, R.C.M. 1935; amd. Sec. 34, Ch. 428, L. 1973; amd. Sec. 5, Ch. 358, L. 1975; R.C.M. 1947, 81-510.

**77-3-319 through 77-3-320 reserved.**

**77-3-321. Repealed.** Sec. 8, Ch. 18, L. 1999.

**History:** En. Sec. 46, Ch. 60, L. 1927; re-en. Sec. 1805.46, R.C.M. 1935; R.C.M. 1947, 81-509.